

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 124 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE A.N.DIVECHA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes
2. To be referred to the Reporter or not? No
- J
3. Whether Their Lordships wish to see the fair copy of the judgement? No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No
5. Whether it is to be circulated to the Civil Judge? No

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STATE OF GUJARAT

Versus

AVTARSINGH PURANSINGH

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Appearance:

Shri M.A.Bukhari, Additional Public Prosecutor, for the appellant - State.

Kum. Sona Sagar, Advocate, for Respondent No.1 (Amicus Curiae)

Shri M.J.Dagali, Advocate, for Respondents Nos.2 & 3.

Respondent No.4 unserved.

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CORAM : MR.JUSTICE A.N.DIVECHA

Date of decision: 23/10/96

ORAL JUDGEMENT

The judgment and order of acquittal passed by the learned Metropolitan Magistrate of Court No.15 at Ahmedabad on 19th November 1994 in Summary Case No.1543 of 1993 is under challenge in this appeal by leave of this Court under Section 378 of the Code of Criminal Procedure, 1973 (the Code for brief). Thereby the learned trial Magistrate acquitted respondents Nos.1 to 3 herein of the offences punishable under Sections 66-B, 65-E, 81 and 116-B of the Bombay Prohibition Act, 1949 (the Act for brief).

2. The facts giving rise to this appeal move in a narrow compass. The police had information about transportation of liquor in one truck belonging to respondent No.2 herein driven by respondent No.1 herein with respondent No.4 herein as a cleaner therein. Thereupon, the police party went near the Chandola Lake and waited for the truck to arrive. On arrival of the truck by 7.45 p.m. it was stopped. Two panch witnesses were kept present. The truck was found to be containing 316 cases of liquor bottles in all numbering 7724 of different brands and varieties. The goods were seized under one panchnama drawn at that time. Thereafter, the Police Inspector of the Police Station at Maninagar filed his complaint of the incident. The chargesheet against the respondents as the accused was submitted to the Metropolitan Magistrate of Court No.15 at Ahmedabad charging the respondents herein with the offences punishable under Sections 66-B, 65-E, 81 and 116-B of the Act. It came to be registered as Summary Case No.1543 of 1993. It appears that respondent No.4 herein could not be traced. By the order passed by the learned trial Magistrate on 21st October 1994, his case was separated from the rest of the accused. The charge against respondents Nos. 1 to 3 as the remaining accused was explained to them for the purpose of recording their plea on 21st October 1994. None of them pleaded guilty to the charge. They were thereupon tried. After recording the prosecution evidence and after hearing arguments without recording any further statement of any of the accused, by his judgment and order passed on 19th November 1994 in Summary Case No.1543 of 1993, the learned Metropolitan Magistrate of Court No.15 at Ahmedabad acquitted the accused of the offences with which they stood chargesheeted. That aggrieved the prosecution agency. It has therefore approached this court by means of this appeal by leave of this court under Section 378 (1) of the Code for questioning the correctness of the aforesaid judgment and order of acquittal passed by the learned trial Magistrate.

3. Respondent No.4 has wrongly been shown as a party respondent in this appeal. He did not appear before the trial court. As pointed out hereinabove, his case was ordered to be separated from that of the other accused. In that view of the matter, this appeal against respondent No.4 at this stage would not be maintainable. It is dismissed qua respondent No.4.

4. Learned Advocate Shri Dagali has appeared for Respondents Nos.2 and 3 herein. Respondent No.1 has appeared neither in person nor through any advocate though duly served. In that view of the matter, I have thought it fit to appoint Advocate Kum. Sona Sagar to assist this court in this case on behalf of respondent No.1 herein.

5. Learned Additional Public Prosecutor Shri Bukhari for the appellant - State has taken me through the entire evidence on record in support of his submission that the learned trial Magistrate has erred in acquitting the accused of the offences with which they were chargesheeted. It has been urged by learned Additional Public Prosecutor Shri Bukhari for the appellant - State that the learned trial Magistrate unduly highlighted the discrepancy in the time recorded in the panchnama and in the complaint. He has further urged that the complaint and the panchnama clearly show what type of liquor was seized from the truck in question, and as such acquittal could not have been based on the ground that the type of liquor was not proved by or on behalf of the prosecution at trial. As against this, both learned Advocate Kum. Sagar for respondent No.1 and learned Advocate Shri Dagali for respondents Nos. 2 and 3 have submitted that police officers cannot be said to be unconscious of the time sense and any incorrect recording of timings would give rise to a doubtful situation and, in view of the settled legal position, the benefit of doubt should always operate in favour of the accused. They have further submitted that this appeal is against the judgment and order of acquittal and the view taken by the learned trial Magistrate is a plausible view, and as such this court need not interfere with it in this appeal.

6. It may be noted at this stage that the complainant in his oral testimony at Exh.7 on the record of the case has clearly admitted in his cross-examination that he received information regarding illegal transportation of liquor in the truck in question at about 7.00 p.m. He has further admitted in his cross

examination that some ten minutes were consumed in seeking panch witnesses and some ten minutes were consumed in reaching the Chandola Lake for vigilance. In that view of the matter, there is no escape from the conclusion that the earliest the police party could have reached the Chandola Lake would be around 7.20 p.m. It transpires from the evidence on record and is also admitted by the complainant in his oral testimony at Exh.7 on the record of the case that the panchnama was begun to be drawn at 6.45 p.m. The panchnama could not have preceded receipt of the information regarding illegal transportation of liquor.

7. It is difficult to accept the submission urged before me by learned Additional Public Prosecutor Shri Bukhari for the appellant - State to the effect that there might be some bona fide error in recording the time of commencement of the panchnama as 6.45 p.m. As rightly submitted by both learned Advocates Kum. Sagar and Shri Dagali for the respective respondents, police officers can be said to be possessing quite good time sense. They cannot be styled as rustic witnesses whose time sense cannot be said to be accurate. That would not be applicable to police personnel. They have to be accurate in their time sense in view of the nature of duties performed by them. Besides, as rightly submitted by both learned Advocates Kum. Sagar and Shri Dagali for the respective

respondents, it is not the case of the complainant that by mistake or through oversight incorrect timing was recorded in the panchnama. In that view of the matter, it is difficult to believe that the panchnama was recorded in the manner and at the time it is shown therein. It may be noted at this stage that panch witnesses have not supported the prosecution at trial.

8. The learned trial Magistrate has also taken into consideration the suggestion put to the complainant in his cross-examination and the other police officer in the raiding party in his oral testimony at Exh.9 on the record of the case that respondent No.2 herein was an office bearer of the truck association and he had often made grievances against police people with respect to undue harassment and the police people in this case have acted against him out of vengeance and vindictiveness. The learned trial Magistrate has taken into consideration this possibility and probability, more particularly in the light of incorrect timings recorded in the panchnama.

9. Since the view taken by the learned trial

Magistrate is a possible view and since this appeal is against the judgment and order of acquittal, I think it calls for no interference by this court in this appeal in view of settled legal principles in that regard.

10. Before parting with the judgment, I shall fail in my duty if I do not record the note of appreciation for valuable assistance rendered by Kum. Sona Sagar as amicus

curiae in this case on behalf of respondent No.1 herein. It must be said to her credit that she got herself ready to argue out the matter at a short notice.

11. In the result, this appeal fails. It is hereby dismissed.

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